

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA

VS.

DONALD FELL

)
)
)
)
)
)

CRIMINAL 5:01-cr-00012

**DEFENDANT DONALD FELL'S DEFENDANT
MOTION TO PRECLUDE THE DEATH PENALTY AS
A PUNISHMENT BECAUSE THE DEATH PENALTY, IN AND OF
ITSELF, CONSTITUTES AN UNCONSTITUTIONAL PUNISHMENT**

Now Comes Donald Fell, through his undersigned counsel and moves this Honorable Court for an order dismissing and/or striking the Amended Notice Of Intent To Seek Penalty Of Death. (Doc. 609).

For the reasons set forth more fully in the accompanying memorandum in support, the administration of the federal death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use under evolving standards of decency.

WHEREFORE, for the reasons described in greater detail in the accompanying Memorandum, Mr. Fell respectfully requests this Court to dismiss and/or to strike the Amended Notice Of Intent To Seek Penalty Of Death on the ground that the federal death penalty, in and of itself, constitutes a legally prohibited cruel and unusual punishment prohibited by both the Fifth and Eighth Amendments.

Dated at San Francisco, California, this 16th day of November, 2015.

Respectfully Submitted,

MICHAEL N. BURT
KERRY B. DeWOLFE
JOHN T. PHILIPSBORN

By: /s/ Michael N. Burt

Law Office of Michael Burt
1000 Brannan Street
Suite 400
San Francisco, California 94103
415-522-1508 (phone)
415-522-1506 (fax)
mb@michaelburtlaw.com
Counsel for DONALD FELL

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I electronically filed with the Clerk of
**DEFENDANT DONALD FELL'S DEFENDANT MOTION TO PRECLUDE THE DEATH
PENALTY AS A PUNISHMENT BECAUSE THE DEATH PENALTY, IN AND OF
ITSELF, CONSTITUTES AN UNCONSTITUTIONAL PUNISHMENT**

using the CM/ECF system. The CM/ECF system will provide service of such filing(s)
via Notice of Electronic Filing (NEF) to the following NEF parties:

Michael N. Burt, Esq.
Kerry B. DeWolfe, Esq.
John Phillipsborn
William B. Darrow, Esq., Assistant United States Attorney
Bruce R. Hegyi, U.S. Dept. Of Justice

I also caused to be served, by U.S. Postal Service, the following non-NEF party:

Donald Fell
Register Number 05306-010
The Metropolitan Detention Center
P.O. Box 329002
Brooklyn, NY 11232

Dated at San Francisco, California, this 16th day of November, 2015.

By: /s/ Michael N. Burt

Law Office of Michael Burt
1000 Brannan Street
Suite 400
San Francisco, California 94103
415-522-1508 (phone)
415-522-1506 (fax)
mb@michaelburtlaw.com
Counsel for DONALD FELL